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□ Handley v. Wyandotte Chemicals Corp., 325 N. W.2d 447, 118 Mich.App. 423 (Mich. App., 1982)

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325 N.W.2d 447

Charles G. HANDLEY, Plaintiff-Appellee,
v.
WYANDOTTE CHEMICALS CORPORATION,
a foreign corporation,
Defendant-Appellant,
and
Detroit Edison Company, a foreign corporation,
and BASF
Wyandotte Corporation, a foreign corporation,
Jointly and Severally, Defendants.

Docket No. 56737.
118 Mich.App. 423, 325 N.W.2d 447

Court of Appeals of Michigan.

Submitted May 18, 1982.
Decided July 21, 1982.
Released for Publication Nov. 9, 1982.

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[118 MICHAPP 424] Lakin, Worsham & Victor, P.
C. by Larry A. Smith, Southfield, for plaintiff-
appellee.

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Capriccioso & Gofrank by Mark S. Goldberg,
Southfield, for defendant-appellant.

Before CAVANAGH, P.J., and KAUFMAN and
BENSON *, JJ.

KAUFMAN, Judge.

Defendant Wyandotte Chemical Corporation
(Wyandotte) appeals by leave granted from the trial
court's denial of its motion for accelerated judgment
based upon the exclusive remedy provision of the
Worker's Disability Compensation Act. M.C.L. Sec.
418.131; M.S.A. Sec. 17.237(131).

☐ [118 MICHAPP 425] Plaintiff was injured on
January 15, 1976, while lubricating a conveyor in an
electrical generating plant. The plant, including the
conveyor, had been constructed by defendant

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Wyandotte. For some years, Wyandotte retained and
operated the plant, but then transferred it to the
Detroit Edison Company. Subsequently, effective
December 31, 1970, Wyandotte merged with the
BASF Corporation. The merger agreement
designated Wyandotte as the surviving corporation,
but provided that its name was to be changed to
BASF Wyandotte Corporation. Following the
merger, BASF Wyandotte acquired the electrical
generating plant from Detroit Edison. At the time of
his injury, plaintiff was acting in the course of his
employment with BASF Wyandotte.

Plaintiff's complaint named as defendants the
Wyandotte Chemical Corporation, BASF Wyandotte
Corporation and the Detroit Edison Company. The
cause of action against BASF Wyandotte was
dismissed by stipulation of the parties. With regard to
defendant Wyandotte, plaintiff claimed that the
corporation was negligent in transferring the

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electrical generating plant to Detroit Edison in a defective condition. In its motion for accelerated judgment, Wyandotte contended that the claim was barred by the exclusive remedy provision because the company was legally identical to plaintiff's employer, BASF Wyandotte.

A corporation is a creature of statute, unable to exist except by the force of express law. *Detroit Schuetzen Bund v. Detroit Agitations Verein*, 44 Mich. 313, 315, 6 N.W. 675 (1880). Consequently, the effect of a merger or consolidation on the existing constituent corporations depends upon the terms of the statute under which the merger or consolidation is accomplished. Here, the merger of Wyandotte[118 MICHAPP 426] and the BASF Corporation was pursuant to 1962 P.A. 155, then M.C.L. Sec. 450.53; M.S.A. Sec. 21.53¹, which read:

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